

**TJS**

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA**

**ANDREW R. PERRONG**  
**1657 The Fairway #131 Jenkintown, PA 19046**  
**Telephone: 215-791-6957**  
**Facsimile: 888-329-0305**  
**andyperrong@gmail.com**

**Plaintiff,**  
**vs.**

**ANTONIO CLYDE SMITH**  
**2736 SUDBURY TRCE**  
**NORCROSS, GA 30071,**

**and**  
**DOES 1 through 100, inclusive,**

**Defendants.**

**Civil Action**  
**No. 17 3366**

**Jury Trial Demanded**

Plaintiff ANDREW R. PERRONG brings this action for damages, statutory damages, punitive damages, interest, court costs, and injunctive relief under rights pursuant to Federal Statute under 47 U.S.C. 227, and 47 C.F.R. 64 (“Federal Question” Jurisdiction) for the *ultra vires* illegal actions and deliberate and knowing tortious activity of ANTONIO CLYDE SMITH, and Does 1 through 100, inclusive, in negligently and/or willfully contacting Plaintiff via Plaintiff’s telephone to solicit sales (“Sales Texts”), in violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227 *et seq.* and related claims that form part of the same claim or controversy and/or under 28 U.S.C. § 1367(a) (“Supplemental” Jurisdiction). Plaintiff demands a trial by jury, and complains and alleges as follows:

## **I. Introduction**

1. Defendant ANTONIO CLYDE SMITH. (“Defendant”) is an individual residing in the State of Georgia that markets and sells, *inter alia*, a multi-level marketing scheme called, among other fictitious and unregistered names, “8 Figure Dream Lifestyle” to individuals throughout the United States.

2. Plaintiff brings this action to challenge the Defendant’s practices in the telephone solicitation of its products and services. Specifically, Plaintiff challenges Defendant’s and Defendant’s agents’ illegal telephone solicitations by which it markets its products and services.

3. All of the claims asserted herein arise out of Defendant’s illegal telephone solicitation campaign and are a common fact pattern.

## **II. Jurisdiction and Venue**

4. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331.

5. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b)(2), in that Defendants conduct business in, and a substantial part of the events giving rise to plaintiff’s claims occurred in, Pennsylvania’s Montgomery County, which lies within this judicial district, pursuant to 28 U.S.C. § 118. Plaintiff received the text messages to a 215-area code number, registered in this judicial district, and was targeted as part of a nationwide spam campaign, satisfying requirements for personal jurisdiction. Also, see *Lary V. The Doctors Answer, LLC* CV-12-S-3510-NE (N.D. Ala. March 8, 2013.), a Federal Telephone Consumer Protection Act case, which held that “venue is proper in the district where [plaintiff] resides because the injury did not occur when the facsimile was sent... ; it occurred when the [facsimile] was received.”

6. Standing is proper under Article III of the Constitution of the United States of

America because Plaintiff's claims state: a.) a valid injury in fact; b.) which is traceable to the conduct of Defendants; and c.) is likely to be redressed by a favorable judicial decision. See, *Spokeo, Inc. v. Robins*, 578 U.S. \_\_\_\_ (2016) at 6, and *Lujan v. Defenders of Wildlife*, 504 U.S. 555 at 560. 29.

### III. Parties

7. Plaintiff ANDREW PERRONG ("Plaintiff") is an individual who received the alleged phone text on his private telephone line mentioned herein. Plaintiff is an adult individual and citizen of the Commonwealth of Pennsylvania who may be mailed at 1657 The Fairway #131 Jenkintown, PA 19046.

8. Defendant ANTONIO CLYDE SMITH. ("Defendant") is an individual located in the State of Georgia that is approximately 38 years old, and transacts business in, *inter alia*, Montgomery County, Pennsylvania, which lies within this Judicial District. Upon information and belief, Defendant resides at 2736 SUDBURY TRCE NORCROSS, GA 30071.

9. Except as described herein, Plaintiff is ignorant of the true names of Defendants sued as Does 1 through 100, inclusive, and the nature of their wrongful conduct, and therefore sues these Defendants by such fictitious names. Plaintiff will seek leave of the Court to amend this complaint to allege their true names and capacities when ascertained.

10. At all times herein mentioned, Defendant, and the Doe Defendants, (collectively, "Defendants"), and each of them, were an agent or joint venture of each of the other, and in doing the acts alleged herein, were acting within the scope of such agency. Each Defendant had actual and/or constructive knowledge of the acts of each of the other Defendants, and ratified, approved, joined in, acquiesced and/or authorized the wrongful acts of each co-Defendant, and/or retained the benefits of said wrongful acts.

11. Defendants, and each of them, aided and abetted, encouraged and rendered substantial assistance to the other Defendants in committing the wrongful acts alleged herein. In taking action, as particularized herein, to aid and abet and substantially assist the commission of these wrongful acts and other wrongdoing complained of each of the Defendants acted with an awareness of its primary wrongdoing and realized that its conduct would substantially assist the accomplishment of the wrongful conduct, wrongful goals, and wrongdoing.

12. At all times herein mentioned, Defendants conspired by means of mutual understanding, either expressly or impliedly, among themselves and others in engaging and/or planning to engage in the activities detailed herein to accomplish the wrongful conduct, wrongful goals, and wrongdoing.

#### **IV. Factual Allegations**

13. In or about April 1, 2017, Plaintiff received the first of multiple text messages from caller ID 470-309-0539 to Plaintiff's private phone 215-791-6957, stating, "Today meet my friend who made \$78,000 in February & Quit His Job Using Our Automated Systems. 4pm est we are having a almost full webinar, go to [www.partnerwithcoachtony.com](http://www.partnerwithcoachtony.com) to "RSVP" NOW before it packs out. Coach Tony 770-913-6184."

14. A full list of all the unsolicited text messages, time, and content, is incorporated herein by reference to Exhibit A. In total, Defendants sent twenty-six (26) messages using the same caller ID and to the same telephone number in the period from April to July of 2017.

15. None of the text messages contained any mechanism to opt out of receiving them.

16. As referenced in Exhibit A, the text messages reference the domain [partnerwithcoachtony.com](http://partnerwithcoachtony.com) and/or [coachtony.us](http://coachtony.us), which are registered personally to Defendant at Defendant's home address.

17. It is obvious that, based on the volume, similar (or sometimes exact) message content, and from having canned text, such text messages were clearly sent via an automated system.

18. Plaintiff's telephone number was active on the Federal Do-Not-Call registry for over thirty-one (31) days prior to the illegal unsolicited text messages, per FTC rules.

19. Plaintiff received the texts on his private telephone line, as defined and set forth in 47 CFR § 64.1200(a)(1)(iii).

20. Plaintiff has sustained, in addition to statutory damages, actual damages in receiving the text messages in the form of clutter to his message inbox, as well as in needing to pay for each text message sent or received on his account.

21. These telephone text solicitations constituted "RoboCalls" under the TCPA that were not for emergency purposes.

22. Plaintiff did not provide any one, more, or all Defendants, nor any agent of Defendants, prior express written consent, or any other form of consent, express or implied, to cause Plaintiff to receive telephone texts on his personal telephone to transmit a message or make texts, despite the message's assertions to the contrary.

23. Plaintiff had no prior business relationship with any one, more, or all of Defendants.

24. The telephone Sales Texts therefore violated various portions of 47 U.S.C. § 227 and 47 CFR 64.1200, as more fully outlined in the Causes of Action set forth below.

## **V. Causes Of Action**

### **First Cause of Action**

(Negligent Violation of the TCPA "RoboText" Prohibition,  
47 U.S.C. § 227(b)(1)(A) et seq.)

25. Plaintiff incorporates and realleges, as though fully set forth herein, each of the



paragraphs above.

26. As a result of Defendants' and Defendants' agents negligent violations of 47 U.S.C. § 227(b)(1)(A), Plaintiff seeks for himself \$500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).

27. Pursuant to 47 U.S.C. § 227(b)(3)(A), Plaintiff seeks injunctive relief prohibiting such conduct in the future.

### **Second Cause of Action**

(Knowing and/or Willful Violation of the TCPA  
"RoboText" Prohibition, 47 U.S.C. § 227(b)(1)(A) et seq.)

28. Plaintiff incorporates and realleges, as though fully set forth herein, each of the paragraphs above.

29. As a result of Defendants' and Defendants' agents knowing and/or willful violations of 47 U.S.C. § 227(b)(1)(A), Plaintiff seeks for himself treble damages, as provided by statute, up to \$1,500.00 for each and every violation, pursuant to 47 U.S.C. § 227(b)(3).

30. Pursuant to 47 U.S.C. § 227(b)(3)(A), Plaintiff seeks injunctive relief prohibiting such conduct in the future.

### **Third Cause of Action**

(Negligent Violation of the TCPA "Sales Text Do-Not-Call Registry" Prohibition,  
47 U.S.C. § 227(c)(3)(F) et seq.)

31. Plaintiff incorporates and realleges, as though fully set forth herein, each of the paragraphs above.

32. As a result of Defendants' and Defendants' agents negligent violations of 47 U.S.C.

§ 227(c)(3)(F), and 47 C.F.R. 64.1200(c)(2), Plaintiff seeks for himself \$500 in statutory damages for each and every violation, pursuant to 47 U.S.C. § 227(c)(3)(F).

33. Pursuant to 47 U.S.C. § 227(c)(5)(A), Plaintiff seeks injunctive relief prohibiting such conduct in the future.

#### **Fourth Cause of Action**

(Knowing and/or Willful Violation of the TCPA  
“Sales Text Do-Not-Call Registry” Prohibition, 47 U.S.C. § 227(c)(3)(F) et seq.)

34. Plaintiff incorporates and realleges, as though fully set forth herein, each of the paragraphs above.

35. As a result of Defendants’ and Defendants’ agents knowing and/or willful violations of 47 U.S.C. § 227(c)(3)(F), and 47 C.F.R. 64.1200(c)(2), Plaintiff seeks for himself treble damages, as provided by statute, up to \$1,500.00 for each and every violation, pursuant to 47 U.S.C. § 227(c)(5).

36. Pursuant to 47 U.S.C. § 227(c)(5)(A), Plaintiff seeks injunctive relief prohibiting such conduct in the future.

#### **Fifth Cause of Action**

(Negligent Violation of the TCPA “Opt-Out Mechanism” Requirement, 47 CFR 64.1200 et seq.)

37. Plaintiff incorporates and realleges, as though fully set forth herein, each of the paragraphs above.

38. As a result of Defendants’ and Defendants’ agents negligent violations of 47 CFR 64.1200(a)(7)(i)(B), Plaintiff seeks for himself \$500 in statutory damages for each and every violation, pursuant to the implied private right of action.

**Sixth Cause of Action**

(Knowing and/or Willful Violation of the TCPA  
“Opt-Out Mechanism” Requirement, 47 CFR 64.1200 et seq.)

39. Plaintiff incorporates and realleges, as though fully set forth herein, each of the paragraphs above.

40. As a result of Defendants’ and Defendants’ agents knowing and/or willful violations of 47 CFR 64.1200(a)(7)(i)(B) Plaintiff seeks for himself treble damages, as implied, up to \$1,500.00 for each and every violation, pursuant to the implied private right of action.

**Seventh Cause of Action**

(Trespass to Chattel)

41. Plaintiff incorporates and realleges, as though fully set forth herein, each of the paragraphs above.

42. Defendants and Defendants’ agents conduct of telemarketing constituted an electronic trespass to Plaintiff’s private telephone. This trespass was significant and substantial in duration in that Defendants’ trespass illegally deprived Plaintiff of the use and enjoyment of his telephone system for lawful purposes. Plaintiff has been damaged in an amount to be determined according to proof at trial.

43. At no time did Plaintiff consent to this trespass.

44. Defendants’ trespass was done with oppression and malice, in that Defendants sent their illegal message intentionally, in actual awareness of its illegal nature, with the purpose of making an illicit profit and with the purposes of vexing, injuring and annoying Plaintiff or with a willful and conscious disregard of Plaintiff’s rights. Plaintiff is therefore entitled to punitive damages.



**Eighth Cause of Action**

(Conversion)

45. Plaintiff incorporates and realleges, as though fully set forth herein, each of the paragraphs above.

46. Defendants and Defendants' agents conduct of telemarketing constituted a conversion of Plaintiff's private telephone. This conversion was significant and substantial in duration in that Defendants' conversion illegally deprived Plaintiff of the use and enjoyment of his telephone for lawful purposes.

47. Plaintiff is therefore entitled to the entire value of his telephone and service, in an amount to be determined according to proof at trial.

48. At no time did Plaintiff consent to this conversion.

49. Defendants' conversion was done with oppression and malice, in that Defendants sent their illegal message intentionally, in actual awareness of its illegal nature, with the purpose of making an illicit profit and with the purposes of vexing, injuring, and annoying Plaintiff or with a willful and conscious disregard of Plaintiff's rights. Plaintiff is therefore entitled to punitive damages.

**WHEREFORE, Plaintiff prays for relief against defendants, and each of them, as follows:**

**VI. Prayer for Relief**

On Causes of Action 1-6:

1. For awards of \$500 for each negligent violation as set forth in actions 1-6;
2. For awards of \$1,500 for each knowing and/or willful violation in actions 1-6;

3. Injunctive relief against Defendants, and each of them, to prevent future wrongdoing;  
Total statutory damages: **\$117,000** (26 counts each of: robotext, sales text to a number on the National Do-Not-Call registry, and failure to provide an opt-out mechanism, with treble damages for each.)

For Causes of Action 7-8:

4. Compensatory, general, incidental, and consequential damages according to proof;
5. Punitive and special damages according to proof;

For All Causes of Action:

6. Punitive damages to punish Defendants for their willful, illegal, and deliberate tortious conduct and to deter others who may otherwise engage in similar willful illegal and deliberate tortious conduct;
7. Prejudgment interest at the maximum legal rate;
8. Costs of suit herein incurred; and
9. All such other and further relief as the Court deems proper

**VII. Demand for Jury Trial**

Plaintiff hereby demands a trial by jury on all claims so triable.

Dated: 7-27-17



Andrew Perrong  
*Plaintiff Pro-Se*  
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**\*\* EXHIBIT A: Listing of Text Messages \*\***

NOTE: All Texts sent from Caller ID 470-309-0539, sent to 215-791-6957

<b>Date/Time</b>	<b>Message</b>
01-Apr-2017 13:31:25	Today meet my friend who made \$78,000 in February & Quit His Job Using Our Automated Systems. 4pm est we are having a almost full webinar, go to <a href="http://www.partnerwithcoachtony.com">www.partnerwithcoachtony.com</a> to "RSVP" NOW before it packs out. Coach Tony 770-913-6184
04-Apr-2017 17:57:35	My Franchise-Like Business earned me \$110,890 in less than 6 Months!! I'll show you proof tonite. Go to <a href="http://www.partnerwithcoachtony.com">www.partnerwithcoachtony.com</a> or TEXT me 470-539-8470 Coach Tony
24-Apr-2017 10:50:54	Check out how I was able to buy a new dream car, CASH AND earn over \$50,000 in less than 30 days...also check out all the others that are having success CLICK HERE ----> <a href="https://tinyurl.com/kepo525">https://tinyurl.com/kepo525</a> then call me directly to get started 770-913-6184 COACH TONY
29-Apr-2017 12:03:01	new video shows 12 ordinary people making \$20k+ every month w/our system. check it out here <a href="http://www.coachtony.us">www.coachtony.us</a> then call me to get started coach tony 770-913-6184
30-Apr-2017 19:01:45	{video proof} \$6500 today while on the grill!! click here: <a href="https://youtu.be/sw8sukm3nde">https://youtu.be/sw8sukm3nde</a> then call me directly so i can help you make \$6500 and \$22,000 daily using a simple video that explains everything for me!! coach tony 770-913-6184
04-May-2017 19:27:02	new video shows 12 ordinary people making \$20k+ every month w/our system. check out how simple it really is here <a href="http://www.coachtony.us">www.coachtony.us</a> then call me to get started coach tony 770-913-6184
23-May-2017 12:21:02	{NEW VIDEO} shows 12 ordinary people making \$20k+ every month w/our system. Check out how simple it really is here <a href="http://www.CoachTony.us">www.CoachTony.us</a> then call me to get started Coach Tony 770-913-6184
25-May-2017 09:38:58	{NEW VIDEO} shows 12 ordinary people making \$20k+ every month w/our system. Check out how simple it really is here <a href="http://www.CoachTony.us">www.CoachTony.us</a> then call me to get started Coach Tony 770-913-6184
29-May-2017 07:30:46	Good morning, This is Tony, I sent you the yellow postcard regarding the house and was trying to reach you but got your voicemail. Please give me a call 770-256-2899
01-Jun-2017 07:25:23	Good morning, This is Tony, I sent you the yellow postcard regarding the house and was trying to reach you but got your voicemail. Please give me a call 770-256-2899
01-Jun-2017 10:37:25	I received your message about earning 10k to 15k with our FRANCHISE-LIKE a business using this simple video. Watch this <a href="http://www.CoachTony.us">www.CoachTony.us</a> then Call Me 770 913 6184 Coach Tony
05-Jun-2017 02:24:08	{NEW VIDEO} shows 12 ordinary people making \$20k+ every month w/our system. Check out how simple it really is here <a href="http://www.CoachTony.us">www.CoachTony.us</a> then call me to get started Coach Tony 770-913-6184

05-Jun-2017 02:36:18	{NEW VIDEO} shows 12 ordinary people making \$20k+ every month w/our system. Check out how simple it really is here <a href="http://www.CoachTony.us">www.CoachTony.us</a> then call me to get started Coach Tony 770-913-6184
08-Jun-2017 02:57:26	You Requested INFO on this FRANCHISE-LIKE System that EARNED me \$55,000 in 30 Days by texting this simple VIDEO. Watch this <a href="http://www.CoachTony.us">www.CoachTony.us</a> then Call ME directly 770-913-6184 Coach Tony
12-Jun-2017 02:54:44	{NEW VIDEO} shows 12 ordinary people making \$20k+ every month w/our system. Check out how simple it really is here <a href="http://www.CoachTony.us">www.CoachTony.us</a> then call me to get started Coach Tony 770-913-6184
15-Jun-2017 00:55:09	You Requested INFO on this FRANCHISE-LIKE System that EARNED me \$55,000 in 30 Days by texting this simple VIDEO. Watch this <a href="http://www.CoachTony.us">www.CoachTony.us</a> then Call ME directly 770-913-6184 Coach Tony
19-Jun-2017 04:01:23	{NEW VIDEO} shows 12 ordinary people making \$20k+ every month w/our system. Check out how simple it really is here <a href="http://www.CoachTony.us">www.CoachTony.us</a> then call me to get started Coach Tony 770-913-6184
22-Jun-2017 02:21:30	You Requested INFO on this FRANCHISE-LIKE System that EARNED me \$55,000 in 30 Days by texting this simple VIDEO. Watch this <a href="http://www.CoachTony.us">www.CoachTony.us</a> then Call ME directly 770-913-6184 Coach Tony
26-Jun-2017 11:36:05	You Requested INFO on this FRANCHISE-LIKE System that EARNED me \$55,000 in 30 Days by texting this simple VIDEO. Watch this <a href="http://www.CoachTony.us">www.CoachTony.us</a> then Call ME directly 770-913-6184 Coach Tony
29-Jun-2017 00:59:30	{NEW VIDEO} shows 12 ordinary people making \$20k+ every month w/our system. Check out how simple it really is here <a href="http://www.CoachTony.us">www.CoachTony.us</a> then call me to get started Coach Tony 770-913-6184
03-Jul-2017 01:54:35	{NEW VIDEO} shows 12 ordinary people making \$20k+ every month w/our system. Check out how simple it really is here <a href="http://www.CoachTony.us">www.CoachTony.us</a> then call me to get started Coach Tony 770-913-6184
06-Jul-2017 02:15:42	You Requested INFO on this FRANCHISE-LIKE System that EARNED me \$55,000 in 30 Days by texting this simple VIDEO. Watch this <a href="http://www.CoachTony.us">www.CoachTony.us</a> then Call ME directly 770-913-6184 Coach Tony
10-Jul-2017 03:04:13	{NEW VIDEO} shows 12 ordinary people making \$20k+ every month w/our system. Check out how simple it really is here <a href="http://www.CoachTony.us">www.CoachTony.us</a> then call me to get started Coach Tony 770-913-6184
13-Jul-2017 01:06:39	You Requested INFO on this FRANCHISE-LIKE System that EARNED me \$55,000 in 30 Days by texting this simple VIDEO. Watch this <a href="http://www.CoachTony.us">www.CoachTony.us</a> then Call ME directly 770-913-6184 Coach Tony
24-Jul-2017 06:36:26	{NEW VIDEO} shows 12 ordinary people making \$20k+ every month w/our system. Check out how simple it really is here <a href="http://www.CoachTony.us">www.CoachTony.us</a> then call me to get started Coach Tony 770-913-6184
24-Jul-2017 06:47:14	{NEW VIDEO} shows 12 ordinary people making \$20k+ every month w/our system. Check out how simple it really is here <a href="http://www.CoachTony.us">www.CoachTony.us</a> then call me to get started Coach Tony 770-913-6184

\*\* End of Exhibit A \*\*